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No. 87-1661

UNITED STATES SUPREME COURT

October Term, 1988

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ASARCO INCORPORATED, CAN-AM  
CORPORATION, MAGMA COPPER  
COMPANY and JAMES P.L. SULLIVAN,  
Petitioners,

v.

FRANK and LORAIN KADISH, et al.,  
Respondents.

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BRIEF OF THE STATE OF  
ARIZONA, AMICUS CURIAE

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### INTEREST OF AMICUS

The State of Arizona has a strong interest in this case because it not only involves the interpretation of its laws, but also the interpretation of its laws by its own Supreme Court based on the state constitution. Here, the federal Enabling Act question is subordinate to the State's own constitutional provisions governing the leasing of state lands and minerals. Accordingly, any decision as to the applicability of the Enabling Act's requirement of appraisal is purely academic and would not alter the outcome of this case.

**IN ANY EVENT, THE ARIZONA MINERAL  
ROYALTY STATUTE WOULD BE INVALID UNDER  
ARTICLE X OF THE ARIZONA CONSTITUTION**

The case here was decided by the Arizona Supreme Court based on the Enabling Act as well as the state constitution:

We hold, therefore, that A.R.S. § 27-234 violates art. 10 of the Arizona Constitution and § 28 of the Enabling Act.  
155 Ariz. 484, 497, 747 P.2d 1183, 1196 (1987).

While the Arizona Supreme Court's interpretation of the Enabling Act is surely reviewable in this Court, as a practical matter review by this Court would not change the outcome based on Article X of the state constitution.

Article X, § 1 of the Arizona constitution subjects all grant lands and "all lands otherwise acquired by the State" to the constitutional restrictions. Mineral lands which came to the State's ownership under the Jones Act clearly are "lands otherwise acquired by the State"

and therefore are subject to Art. X's restrictions.

All state lands are "held in trust to be disposed of in whole or in part, only in manner as in the said Enabling Act and in this Constitution provided . . . ." (Art. X, § 1) (emphasis added). Article X, § 1 also provides that the "natural products and money proceeds of any of said lands shall be subject to the same trusts as the lands producing the same."

It is therefore plain that, under Arizona's constitutional scheme, the mineral lands and minerals are subject to the trust imposed by the state constitution.

Article X, § 3 of the Arizona Constitution requires that "lands shall not be sold or leased, in whole or in part, except to the highest and best bidder at a public auction" and that sales of the natural products of such lands shall be made "in the manner . . . provided for sales and leases of the lands themselves." Ar-

ticle X, § 4 provides that "lease-holds, timber, and other products of land, before being offered, shall be appraised at their true value, and no sale or other disposal thereof shall be made for a consideration less than the value so ascertained . . ."

Arizona's constitutional scheme as to true value/public auction applies fully to Jones Act mineral lands. Absent any overriding congressional legislation, Arizona can validly subject those lands to the State's constitutional protections.

The Arizona Supreme Court held very recently:

The Enabling Act, as interpreted in Lassen [Lassen v. Arizona, 385 U.S. 458 (1967)], merely sets out the minimum protection for our state trust land. We independently conclude that our state constitution does much more.

Deer Valley Unified School Dist. No. 97 v. Superior Court, \_\_\_ Ariz. at \_\_\_, \_\_\_ P.2d at \_\_\_ (filed June 30, 1988).

The Deer Valley decision is fully consonant with long-established precedent of this Court. See Haire v. Rice, 204

U.S. 291, 27 S.Ct. 281 (1907), affirming State v. Rice, 33 Mont. 365, 83 P. 874 (1906) (Montana's constitutional provision as to the use of trust proceeds governs over the provision of the Enabling Act).

Logically, under Deer Valley, regardless of whether the Jones Act mineral lands are subject to the restrictions of § 28 of the Enabling Act, the true value/public auction imposed by Art. X of the Arizona Constitution would apply and any decision by this Court would be purely academic.

#### CONCLUSION

The petition should be dismissed for the lack of a substantial federal question.

Respectfully submitted,

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